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**From:**

**Sent:** January 16, 2015

**To:**

**Cc:**

**Subject:** Question RE interest on FUTA and 6601(i)

You asked how section 6601(i) applies to FUTA, and whether interest can accrue on FUTA underpayments.

Section 6601(i) creates an exception to the section 6601(a) underpayment interest for FUTA taxes, which are prescribed by section 3301, where those taxes are “for a calendar quarter or other period *within* a taxable year required under authority of section 6157.” § 6601(i) (emphasis added). Section 6157 provides for the computation of FUTA taxes on a quarterly basis for the first three quarters of a calendar year, and for payment of those taxes as prescribed by regulation, but does not provide for the fourth quarter (annual) payment. See § 6157. Where the aggregate of quarterly amounts computed per section 6157 but not yet deposited does not exceed \$500, no tax payment need be made per section 6157. See Treas. Reg. § 31.6302(a)-3(a)(2). Otherwise, the employer must deposit the amount due according to the regulations. See Treas. Reg. § 31.6302(a)-3(a)(1).

Independent of the deposit requirement imposed by section 6157 and Treasury Regulation § 31.6302(a)-3(a)(1), an employer must file an annual return for FUTA taxes, generally on Form 940. See Treas. Reg. 31.6011(a)-3(a). The aggregate of FUTA taxes computed for the calendar year per section 3301 but not yet deposited per section 6157 and Treasury Regulation § 31.6011 must be made by January 31 of the year following the year for which the payment is due, regardless of whether it exceeds \$500. See Treas. Reg. § 31.6071(a)-1(c); Instructions for Form 940, p. 3.

If an employer failed to make required payments *within* a tax year per section 6157, the section 6601(i) exception would apply and no interest would be due on the underpayment. But that taxpayer would still owe the tax imposed by section 3301, and if the taxpayer failed to pay that amount by January 31—as required by Form 940, rather than section 6157—then the section 6601(i) exception would not apply and interest would accrue per section 6601(a).

Please let me know if you have any additional questions.  
Thanks!